

Peer Review Survival Kit: Is Your Peer Review Process Safe?

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- ▶ Safety First! For Physician Reviewers AND For Physicians Under Review
- ▶ Qualifying for Federal Immunity Protections
- ▶ Maximizing State Law Protections
- ▶ Transparency Pros and Cons
- ▶ Blocking Abuse of Process
- ▶ Protecting Professionalism

Defining Peer Review



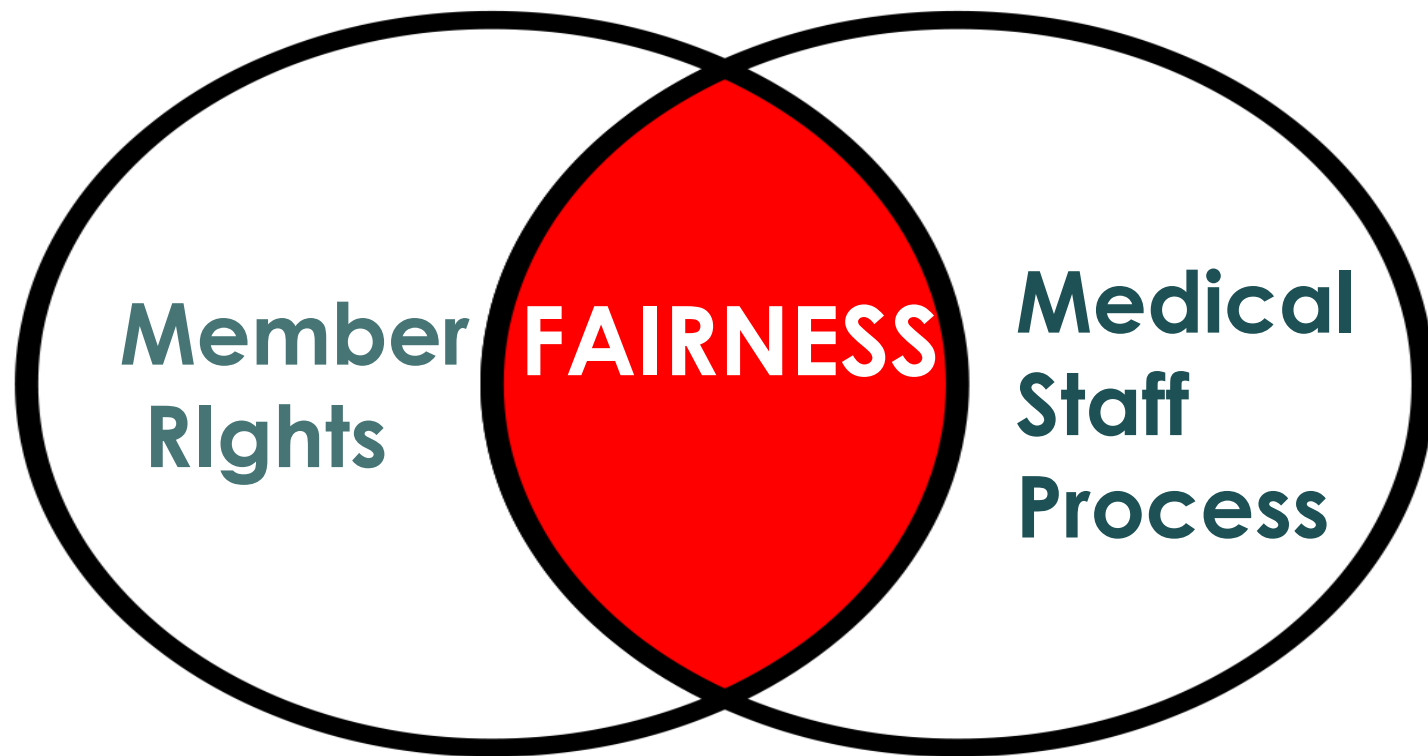
"You're doing it wrong."

Safety First! For Physician Reviewers AND For Physicians Under Review

- ▶ Immunity
- ▶ Confidentiality
- ▶ Fairness / Due Process

MEDICAL STAFF BYLAWS PROTECT MEMBERS +MS

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Qualifying for Federal Immunity Protections

Patrick v. Burget

800 F. 2d 1498 (1986) (9th Cir);
108 S. Ct. 1658 (1988)

- ▶ Astoria Medical Group
- ▶ Former Partner Dr. Patrick
- ▶ Columbia Hospital
- ▶ Oregon Medical Board
- ▶ “Sham Peer Review”
- ▶ \$2.5 million in anti-trust damages
- **Health Care Quality Improvement Act**

HCQIA Protects “Professional Review Actions”

The term “professional review action” means an action or recommendation of a **professional review body** which is taken or made in the **conduct of professional review activity**, which is **based on the competence or professional conduct** of an individual **physician** (which conduct **affects or could affect adversely the health or welfare of a patient or patients**), and which **affects (or may affect) adversely the clinical privileges, or membership in a professional society**, of the physician.

42 USC §11151(9)

HCQIA IMMUNITY

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Immunity Coverage Available To:

- ▶ Professional Review Bodies
- ▶ Members/Staff of Those Bodies
- ▶ Those Under Contract With the Bodies
- ▶ Anyone who participates or assists the bodies with respect to action
- ▶ Those who provide information regarding competence/conduct unless the information is false and the person giving the information knew it was false

“Professional Review Bodies”

The term "professional review body" means a **health care entity** and the **governing body** or any committee of a health care entity which conducts professional review activity, and **includes any committee of the medical staff of such an entity when assisting the governing body in a professional review activity.**

“Health Care Entity”

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- ▶ (a) A hospital;
- ▶ (b) An entity that provides health care services, and engages in professional review activity through a formal peer review process for the purpose of furthering quality health care, or a committee of that entity...

“Formal Peer Review Process”

Formal peer review process means the conduct of professional review activities through **formally adopted written procedures** which provide for **adequate notice and an opportunity for a hearing.**

Conditional Immunity

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Only good faith peer review qualifies for HCQIA protection

1. Done with reasonable belief that action was to further quality health care
2. Reasonable effort was made to obtain the facts
3. Adequate notice and fair hearing procedures afforded to the physician in question
4. Reasonable belief that action was warranted by the facts after 2 and 3 accomplished

Adequate Notice & Hearing.1/3

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The physician is given written notice of the proposed action, stating

That a professional review action has been proposed to be taken against the physician;

The reasons for the proposed action;

That the physician has the right to request a hearing on the proposed action;

Any time limit (of not less than 30 days) within which to request such a hearing, and

A summary of rights in the hearing.

Adequate Notice & Hearing.2/3

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If a hearing is requested, the physician must be given **notice** of hearing, stating:

The place, time and date of the hearing, which date shall not be less than 30 days after the date of the notice of hearing; and

A list of the witnesses (if any) expected to testify at the hearing on the part of the professional review body.

If a hearing is requested, the hearing shall be **held** (as determined by the health care entity)

Before an arbitrator mutually acceptable to the physician and the health care entity;

Before a hearing officer who is appointed by the entity and who is not in direct economic competition with the physician involved; or

Before a panel of individuals who are appointed by the entity and are not in direct economic competition with the physician involved.

Adequate Notice & Hearing.3/3

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► In the **hearing**, the physician involved has the right

- To representation by an attorney or other person of the physician's choice,
- To have a record made of the proceeding, copies of which may be obtained by the physician upon payment of any reasonable charges associated with the preparation of the record,
- To call, examine and cross-examine witnesses,
- To present evidence determined to be relevant by the hearing officer, regardless of its admissibility in a court of law, and
- To submit a written statement at the close of the hearing.

► Upon **completion** of the hearing, the physician has the right

- To receive the written recommendation of the hearing body, including a statement of the basis for the recommendation, and
- To receive the written decision of the hospital or health care entity, including a statement of the basis for the decision.

Exceptions to HCQIA Immunity

- ▶ Civil Rights Actions
- ▶ Professional Review of non-physicians
- ▶ Activities failing to meet the definition of Professional Review
- ▶ Health care entities failing to meet the standards for immunity
- ▶ Health care entities failing to report information the National Practitioner Data Bank

Safety Check

Federal Reporting (NPDB)

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Hospitals/other health care entities (e.g., HMOs, medical groups) must report adverse actions against physician's clinical privileges based on professional competence or conduct

- (1) Denial, revocation, suspension, limitation in clinical privileges for longer than 30 days
- (2) Surrender or restriction of clinical privileges by a physician while under or to avoid investigation or proceeding.

Maximizing State Law Protections

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- ▶ Different Requirements
- ▶ Different Protections

THEREFORE

**ADAPT
Model and
System
Processes!**



Blocking Abuse of Process

Abuse of Peer Review

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- ▶ Undermine Competition
 - ▶ From colleagues
 - ▶ From independents
- ▶ Remove Unwanted Physicians
 - ▶ Revenge
 - ▶ Control

Transparency Pros and Cons

Transparency Pros

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- ▶ Federal standards for notice
- ▶ Data Bank ramifications
- ▶ State law confidentiality exceptions
- ▶ Information from the source
- ▶ Confidence in peer review

Transparency Cons

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- ▶ Delay



Protecting Professionalism

Voluntary Medical Peer Review

Our AMA advocates the following principles for voluntary medical **peer review**: (1) Medical **peer review** is an organized effort to evaluate and analyze medical care services delivered to patients and to assure the quality and appropriateness of these services. **Peer review** should exist to maintain and improve the quality of medical care.

(2) Medical **peer review** should be a local process.

(3) Physicians should be ultimately responsible for all **peer review** of medical care.

(4) Physicians involved in **peer review** should be representatives of the medical community; participation should be structured to maximize the involvement of the medical community. Any **peer review** process should provide for consideration of the views of individual physicians or groups of physicians or institutions under **review**.

(5) **Peer review** evaluations should be based on appropriateness, medical necessity and efficiency of services to assure quality medical care.

(6) Any system of medical **peer review** should have established procedures.

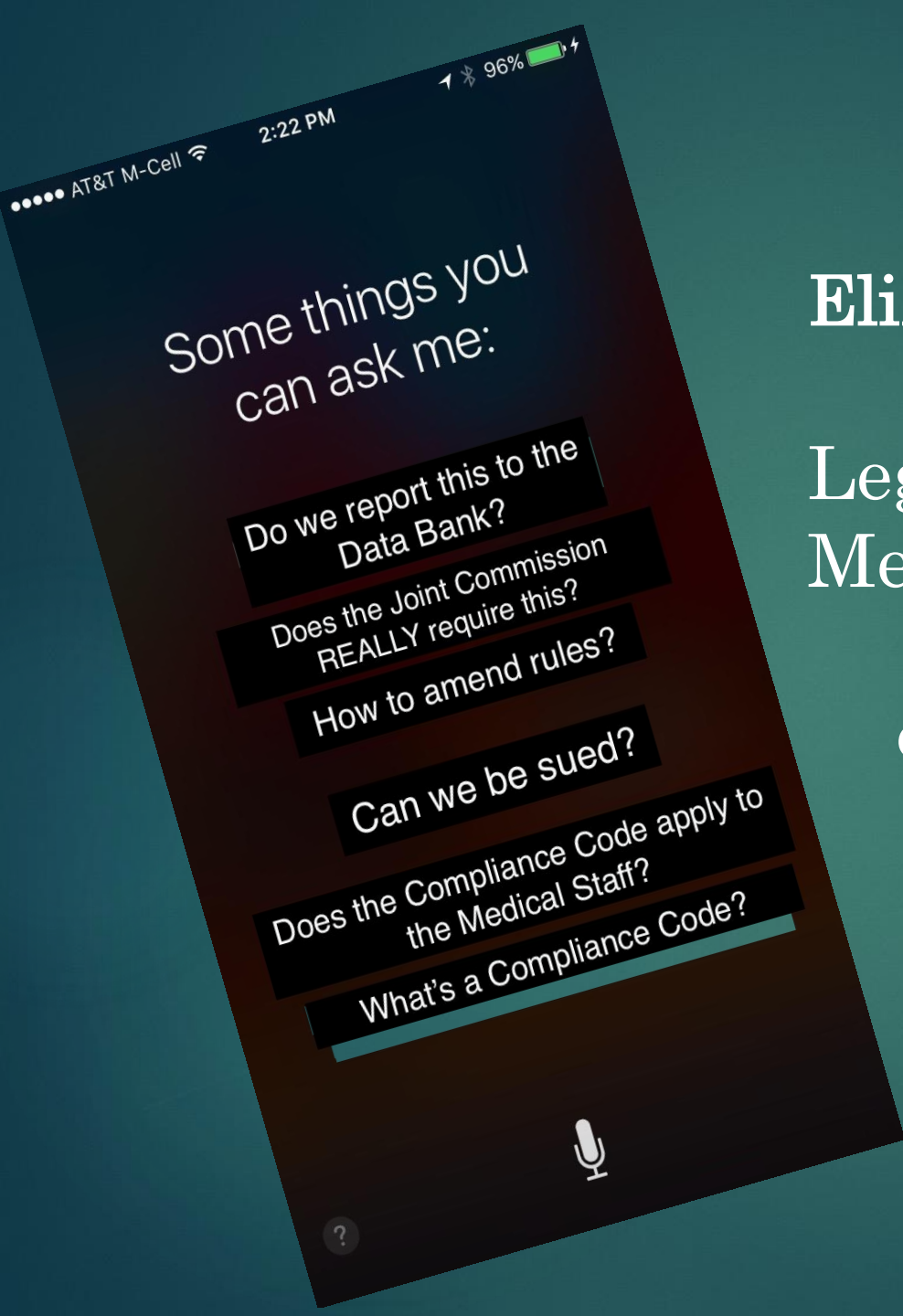
(7) **Peer review** of medical practice and the patterns of medical practice of individual physicians, groups of physicians, and physicians within institutions should be an ongoing process of assessment and evaluation.

(8) **Peer review** should be an educational process for physicians to assure quality medical services.

(9) Any **peer review** process should protect the confidentiality of medical information obtained and used in conducting **peer review**.

“Physicians should be ultimately responsible for all **peer review** of medical care.”





Some things you
can ask me:

Do we report this to the
Data Bank?

Does the Joint Commission
REALLY require this?

How to amend rules?

Can we be sued?

Does the Compliance Code apply to
the Medical Staff?

What's a Compliance Code?

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